

Remarks

The examiner rejected claims 1,3-6, and 8-10 under 35 U.S.C. §102(b) as anticipated by Halloran et al (US Patent No. 5173290).

As stated by the Examiner, “Halloran et al discloses an alkyl-phenyl silsesquioxane resin in combination with powders, such as thickeners – sodium alginate, starch, etc. (column 13, lines 11-16).” And “Although Halloran et al clearly teach a personal care hare fixative composition comprising alkyl-phenyl silsesquioxane and powder, Halloran et al do not explicitly teach lipstick or foundation cosmetic composition. Halloran et al. also do not specifically teach that alkyl-phenyl silsesquioxane contains the units recited in instant claim 2”.

The limitation of claim 2 was incorporated into claim 1, therefore the rejection is moot. The limitation in the composition being made in claim 1, there is no longer anticipation for claims 3-6 and 8-10.

The examiner rejected claims 2 and 7 under 35 U.S.C. §103(a) as being unpatentable over Halloran et al (US Patent No. 5173290) as applied to claims 1 and 3-6 above, and further in view of Schlosser (US 2004/0180011, IDS reference) because Schlosser teaches the use of C2-20 alkyl phenyl silsesquioxane resins in cosmetic formulations providing cosmetics with good feel and water resistance.

The Applicant would like to draw the Examiner’s attention to the fact there was conception and reduction to practice of the claimed invention prior to the filing date of Schlosser, invalidating the reference as potential prior art. Attached is an affidavit signed by Gary Wieber, as inventor of the present application, showing examples prepared prior to March 13th 2003 at Dow Corning, ie. prior to the filing date of the Schlosser et al invention US2004/0180011A1.

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Because Schlosser is not valid prior art, the Applicant believes there is no longer an obviousness issue in the present case.

Therefore, the applicants request that the rejection under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) be withdrawn and the claims allowed to issue.

This reply is being submitted with a 3 months extension of time for response to the outstanding office action. Although the applicants believe in good faith that no additional extensions of time are needed, the applicants hereby petition for any necessary extensions of time. You are authorized to charge deposit account 04-1520 for any fees necessary to maintain the pendency of this application. You are authorized to make any additional copies of this sheet needed to accomplish the purposes provided for herein and to charge any fee for such copies to deposit account 04-1520.

Respectfully Submitted,
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